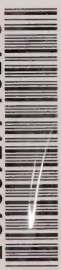


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WOMEN & CONSTITUTIONAL RENEWAL



By

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A PAPER PREPARED FOR THE
CANADIAN ADVISORY COUNCIL ON THE STATUS OF WOMEN

AS A CONTRIBUTION
TO DISCUSSION
ON THE CONSTITUTION
SEPTEMBER 1980

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On July 4, 1980, the Prime Minister gave this brief but vivid description of the constitutional reform process:

"... for 53 years, politicians have been trying to bring the Constitution back. Ten different and distinct attempts during the terms of six different Prime Ministers and politicians have always failed. And that's why it's up to you, the people, to decide that this matter must be done. So let us move!"(1)

Ordinary Canadians have been aware of discussions about "the Constitution" and "patriation" over the years. It is probably a safe guess, however, to say that few ordinary Canadians have believed this process to have much relevance to their lives. Constitutional discussion has seemed like the specialty of governments, and of specialists within governments.

The prospect of returning our Constitution to Canada, and of the changes which will attend that return, should have much more meaning for Canadians than it does. Part of the reason for our lack of interest may well be the thick cloud of professional, and non-professional, terminology which hangs over

(1) Pierre Elliot Trudeau, "The Prime Minister's Speech to the National Convention of the Liberal Party of Canada", Winnipeg, July 4, 1980 (Ottawa: Prime Minister's Office, 1980), p.10.

the vital debate. We must try to decipher the differences between "constitutional review" and "constitutional renewal". Our options include "renewed federalism" and "restructured federalism". Special Committees, Task Forces and Continuing Committees all figure in the deliberations. To the non-professional, outside of the constitutional change bureaucracy, the picture is fuzzy indeed.

A more significant reason, perhaps, for Canadians' lack of zest for the constitutional review (or renewal) process is the difficulty of translating the abstractions of constitutional debate into terms which have real immediacy. Conditional and unconditional grants may seem like a remote topic, few of us realizing how vital the services funded by such grants may be to our well-being on a daily basis. It is crucial to begin putting the debate into this less grand, more concrete perspective, so that those whose lives, and whose children's lives, will be affected can see the whole process as one in which they have much at stake.

This paper is directed at one group of ordinary Canadians with a very special relationship to the Constitution: the women of Canada. It explores, briefly, the background of the constitutional debate, and then moves to discuss some issues which are of particular interest to women in Canada. Not all such issues will be covered. Women are citizens, and as such

will have as wide a range of particular concerns as any other similarly large and diverse group of citizens. On the other hand, it is thought that there will be some issues which can be expected to have impact on a large number of women, and these will be dealt with here. As other papers will treat particular issues in greater detail, only a general outline will be given. It is, hoped, however, that the outline will be a sufficient point of departure for research and discussion which particular groups or individuals want to pursue.

The Constitution and Constitutional Review

(a) The Constitution

A simple but satisfactory definition of a constitution has been provided by the Pepin-Robarts Task Force on Canadian Unity. In its report Coming to Terms: The Words of the Debate, the Task Force states:

"A constitution is a set of fundamental laws, customs and conventions which provide the framework within which government is exercised in a state.

A constitution contains essentially: (1) the basic principles, objectives and rules which command the political life of a society; (2) the definition of the principal organs of government in all four branches -- the legislative, the executive, the judicial and the administrative -- their composition, functions, powers and limitations; (3) the distribution and coordination

of powers between the two orders of government if the form of government is a federal one; (4) the definition of relationship between the governors and the governed, particularly the rights of the latter."(2)

This definition, although simple, is a broad one. A narrower definition of Constitution is those rules which are embodied in a basic constitutional document.(3)

Our basic constitutional document is The British North America Act, passed in 1867 by the British Parliament to bring about Confederation, and amended a number of times since then.(4) This Act does not have a preamble which sets out our basic goals and understandings as Canadians. It lacks a Bill of Rights. It cannot be amended in Canada, except for those parts of it affecting only the federal government. The British North America Act does contain provisions about the organization of some of our basic institutions, like the Senate, House of Commons, and Supreme Court. There are many however,

- (2) Task Force on Canadian Unity, Coming to Terms: The Words of The Debate (Ottawa: Supply and Services Canada, 1979), p.29.
- (3) Peter Hogg, Constitutional Law of Canada (Toronto: Carswell, 1977), p.1.
- (4) 1871, 1886, 1907, 1915, 1930, 1940, 1943, 1946, 1949, 1949(No. 2), 1951, 1952, 1960, 1964, 1965. See R.S.C., 1970, Appendix. See also Canadian amendments, Representation Act, 1974, S.C. 1974-75-76, c.13; Northwest Territories Representation Act, 1975, S.C. 1974-75-76, c.28; British North America Act (No. 2), 1975, S.C. 1974-75-76, c.53.

who consider that these institutions need re-organization. The British North America Act also contains provisions which allocate legislative power to the federal and the provincial governments. Over some topics, like banking, the federal government has sole authority to pass laws. The provincial government has sole authority over certain other topics, like property rights. In some fields like agriculture, both levels of government can pass laws. The need to re-evaluate the distribution of legislative power in light of contemporary problems and responsibilities is stressed again and again by governments.

Since the centennial of Confederation in 1967, there have been scores of meetings and many reports on the subject of constitutional review. In 1971, at a Constitutional Conference in Victoria, the federal and provincial governments narrowly failed to reach agreement on a Charter of basic provisions for a new constitution. This "Victoria Charter" was reviewed, and a full proposal for a new constitution put forward, in the 1972 Report of the Special Joint Committee of the Senate and of The House of Commons on The Constitution of Canada (Molgat-MacGuigan Report). The Pepin-Robarts Task Force on Canadian Unity was appointed in July 1977, not long after The Parti Quebecois was elected to form the government of Quebec. Its report, A Future Together, emerged in 1979. Shortly before that, the federal

government had tabled in Parliament Bill C-60, The Constitutional Amendment Bill, its unsuccessful attempt to proceed unilaterally with reform of certain topics it considered to be within federal jurisdiction. Prior to the Quebec Referendum, the Government of Quebec published in November, 1979 Quebec-Canada: A New Deal - The Quebec Government's Proposal for a New Partnership Between Equals: Sovereignty Association. In January of 1980, the Constitutional Committee of The Liberal Party of Quebec issued its proposal for A New Canadian Federation. Other groups, public and private, have also prepared major position papers on the constitutional debate.

The first Constitutional Conference since Victoria was held in Ottawa from October 30 to November 1, 1978. At that meeting, it was agreed that study should go ahead on fourteen items relating to the distribution of powers. The First Ministers also established a Continuing Committee of Ministers on the Constitution to meet on these items and prepare a report for the next First Ministers' Conference, scheduled for February 1979.

At the February, 1979 Conference, a "best effort" draft of proposals on family law was discussed. This topic, quickly broached by The Prime Minister at the 1978 meeting, has since become a focal point for women's growing awareness of the

constitutional debate, and governments' positions on it continue to evolve. Following the February 1979 Conference, the Prime Minister made public a list of eleven subjects which he proposed for the second phase of constitutional review.

In June 1980, the federal government announced its dedication to a full review of all constitutional measures now applying to the federation, singling out certain priority matters in a third list of topics. In July of 1980, the Continuing Committee of Ministers on the Constitution resumed meetings, preparatory to another First Ministers' Conference scheduled for September 1980.

What Business Is This Of Ours?

Anyone who has watched the televised meetings of the First Ministers will have noticed the total, or almost total, absence of women from the personnel of various governmental delegations. Constitutional review has been up to now a pursuit of men, as well as the business of specialists. It is time that women became more involved, and there are signs that this is beginning to happen.

In its May/June NAC Memo, The National Action Committee on the Status of Women announced that constitutional reform was its first priority for this year. It gave its tentative list of "Issues for Women in the Debate". The list

included fifteen items, and a warning that it was not all inclusive! The N.A.C. items are:

- (1) Entrenchment of the Human Rights in the Constitution.
- (2) Indian Rights as it relates to Native Women.
- (3) Family Law - marriage, divorce, property & civil rights.
- (4) Economic - equal pay, maternity leave, child care, UIC, etc..
- (5) Education - retraining, skill training.
- (6) Political - representation of women in Senate, on boards & commissions, courts, Lieutenant Governors, Crown.
- (7) Income Security - pensions.
- (8) Health & Welfare.
- (9) Criminal Law - abortion.
- (10) Immigration.
- (11) Administration of Justice.
- (12) Communications.
- (13) Cultural Policy.
- (14) Housing.
- (15) Environment.

There is certainly some overlap between the topics on this list and those on the lists made public by government in connection with the constitutional review process. The topics agreed upon for study at the meeting of October-November 1978,

for example, included Communications, Senate, Supreme Court, Family Law, Charter of Rights, and Spending Power. The Prime Minister's "second list" issued following the February 1979 meeting proposed examination of the questions of the appointment of Superior Court Judges and of Canada's native peoples and the Constitution. The "priority" list released in June 1980 lists among its thirteen topics A Statement of Principles, A Charter of Rights, Communications, Family Law, A New Upper House and The Supreme Court.

Although there is this core of common interest in basic rights, government institutions, and family law, there is some real divergence on the other matters. The N.A.C. list, for example, sees economic issues in terms of immediate impact on individuals: pensions, equal pay, child care, U.I.C.. The "official" lists give priority to matters like resource ownership, interprovincial trade, general powers affecting the economy, and reduction of regional disparities through equalization or sharing. There is little doubt that these issues are significant for women, as for all Canadians. On the other hand, women may well wonder if there is a way of ensuring that they will share the economic well-being which governments hope will be generated by these measures. They also want to share in that economic well-being in a way which accords with their sense of priorities.

In this paper are considered some of the issues which women seem to have in common with the governments involved in constitutional review: the preamble and charter of rights, government institutions, and family law. We also examine the proposals affecting the spending power of governments, because control over that power - whether at the federal or the provincial level - is what determines what programs will be started, how much funding they will receive and how long they will live. It may well be here that we find the connection between the larger economic preoccupations of governments and the day-by-day economic interests of women.

Women's Special Relation to the Constitution

At one time, not so very long ago, The Chief Justice of Canada stated that it would be a "vast" constitutional change to hold that women were "Persons" who could be eligible to sit in the Senate.⁽⁵⁾ Earlier, an English Law Lord had described as "momentous and far reaching" the constitutional change inherent in holding a woman eligible to vote in Parliamentary elections.⁽⁶⁾ Until the decision of the

(5) Anglin, C.J.C. in Reference as to the Meaning of The Word 'Persons' in Section 24 of The British North America Act, 1867, [1928] S.C.R. 276, 287.

(6) Nairn v. University of St. Andrews, [1909] A.C. 147 (H.L.)

Privy Council in Edwards v. A.G. Canada,⁽⁷⁾ the "Persons Case", women were regarded as incapable under the Constitution of taking part in public life.

As Nellie McClung said,

"That men are human beings, but women are women, with one reason for their existence, has long been the dictum of the world."⁽⁸⁾

In a long series of legal cases, in the British Isles as well as Canada, women had sought to assert that the enlightened reform legislation conferring political rights on "persons" or on "men" also applied to them. Until the "Persons Case", they were unsuccessful.

For example, the New Brunswick Supreme Court held in 1905 that Mabel French was not a "person" who could become a barrister in that province. Once again, the personhood of

(7) [1930] A.C. 124.

(8) Nellie McClung, In Times Like These (Toronto: U of T. Press, 1972) p.22.

women was described as a "radical" change.⁽⁹⁾ In Quebec, with its civil law tradition, the same arguments of civil incapacity were met by a woman applicant for a call to the bar. In a 1915 action by Annie Langstaff for admission to the Quebec bar, Mr. Justice Saint-Pierre stated that for a woman to be admitted as a barrister "would be nothing short of a direct infringement upon public order and a manifest violation of the law of good morals and public decency."⁽¹⁰⁾

This, then, was the state of women's constitutional position as late as the 1920's in Canada. A series of statutes had secured some access to the franchise, but this was by no means universal, as women in some provinces were still subject to exclusions. In 1928, five women from Alberta petitioned the government to have the Supreme Court decide whether women were "Qualified Persons" who could be appointed to the Senate under section 24 of The British North America Act, 1867. The "Five Persons", as they came to be known, were Henrietta Muir Edwards, Irene Parlby, Louise Crummy MacKinney,

(9) (1905) 37, N.B.R. 359, at 371. A statute was required to provide for her entry to the bar. See S.N.B. 1906, s.5. In British Columbia, she met the same resistance. See Re Mabel French (1912), 1 WWR 488 (B.C.C.A.) and S.B.C. 1912, c.18

(10) (1915), 47 Q.S.C. 131, at 142. Affirmed at (1915) 16 Q.K.B. 11.

Nellie McClung, and Emily Murphy. The latter, a police magistrate, had often heard argued in her court the quaint proposition that "women are persons in matters of pain and penalties but not persons in the matter of rights and privileges."(11)

The Supreme Court of Canada rejected the proposition that women are persons, but the case was appealed to the Judicial Committee of the Privy Council in England. The Privy Council accepted the idea, and it now forms part of the constitutional law of this country. As such it should be jealously guarded.

Implications of the Persons Case

The difficulty of relying on neutral language like "person" or generic language like "man" to deal with women's rights has been demonstrated in the cases leading up to the "Persons" case.

We still, however, have a provision in our Interpretation Act which states that "unless a contrary

(11) Grant MacEwan, ... and mighty women too (Saskatoon: Western Producer Prairie Books, 1975), p.133. See also Rv. Cyr (alias Waters), [1917] 3 W.W.R. 849 (Alta. S.C.)

intention appears",⁽¹²⁾ words "importing male persons include female persons and corporations".⁽¹³⁾ How easy it may still be for a "contrary intention" to be found!

Accordingly, it is probably more than wise -- although somewhat tiresome -- to scrutinize carefully the language employed in a new constitution for any sweeping declarations of principle. Examples abound. The Declaration of the Rights of Man and of the Citizen (France, 1789) states, "Men are born and remain free and equal in respect of rights". The American Declaration of Independance provides, "We hold these truths to be self evident, that all men are created equal ...". In 1950, the Senate Special Committee on Human Rights wrote, "The brotherhood of man results from the fatherhood of God, and a fundamental equality among men necessarily follows".⁽¹⁴⁾ The Canadian Bill of Rights affirms that:

"... The Canadian nation is founded upon principals that acknowledge the supremacy of God, the dignity and

(12) R.S.C. 1970, c.I-23, s.3(1).

(13) R.S.C. 1970, c-I-23, s.26(6).

(14) Canada, Senate, "Official Report of Debates, 1950, Second Session, Twenty-first Parliament, 14 Geo. VI (Ottawa: King's Printer, 1950), Appendix. Special Report of the Committee on Human Rights, 585, at 587.

worth of the human person and the position of the family in a society of free men and free institutions ..."(15)

The second important consequence of our constitutional "frailty" is that we can really take nothing for granted where basic rights are concerned. The basic political rights of voting and holding office depend on a combination of case law and statute. If a Bill of Rights were to be "entrenched" in a constitution, firmer safeguards could -- and should -- be given these fundamental rights. This sort of protection was proposed by the federal government prior to the Victoria Conference.⁽¹⁶⁾ Article 5 of Part I of the Victoria Charter affirmed that no citizen shall, by reason of race, ethnic or national origin, colour, religion or sex be denied the right to vote in an election of members of the House of Commons or the Legislative Assembly of a Province, or be disqualified from membership therein.⁽¹⁷⁾ This sort of fundamental and unqualified guarantee should be looked for in any new constitution. The provincial governments are not uniformly in favour of an entrenched Bill of Rights. The federal government

(15) S.C. 1960, c.44, R.S.C. 1970, Appendix III.

(16) Canada, Constitutional Conference 1968. Working Paper No. 3. A Canadian Charter of Human Rights. (Ottawa: Queen's Printer, 1968) p. 25.

(17) Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, Report (Ottawa: Queen's Printer, 1972), p. 106.

is, but its present proposals for coverage would permit a "reasonable" distinction or limitation in the right to vote. Surely, there is little need for such qualification.

An Entrenched Bill of Rights

The former incapacity of women at common law gives them a special interest in the question of whether the Constitution of Canada should include an entrenched Bill of Rights. Briefly, a Bill of Rights is a safeguard of the rights which the citizen holds secure from invasion or curtailment by the state. "Entrenchment" means that those rights are preserved from legislative interference by the state as well as from administrative interference. The Courts are to judge the propriety of government action according to the standards in the constitution. As will be outlined below, simply "entrenching" protections is not enough. It is also important to consider what an "entrenched" Bill of Rights should guarantee. Some types of protection are, unfortunately, next to meaningless.

The present Canadian Bill of Rights, passed in 1960, does set forth a number of fundamental rights and freedoms which, it says, have always been enjoyed by Canadians. The Bill, however, is expressly stated not to affect provincial actions. As an ordinary federal statute, it can affect only

matters within federal jurisdiction under The British North America Act. An entrenched Bill of Rights would affect both federal and provincial spheres of activity.

Judicial interpretation of the Canadian Bill of Rights has been cautious, to say the least. It clearly reflects the view of the Supreme Court of Canada that Parliament did not intend the Bill of Rights to apply to legislative activities of Parliament, as distinct from the simple "administration of the law".

A provision of particular significance for women is the provision in section 1(b) of the Bill of Rights:

"It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely, ... (b) the right of the individual to equality before the law and the protection of the law."

The phrase was immediately seen by women (and some men) as a way of achieving real equality by requiring removal of legislated differences between the sexes. This may have been a fond hope right from the outset. After all, the Justice

Minister who proposed the Bill, Mr. Davie Fulton, stated in committee hearings on the Bill:

"I do feel that the expression ... would not be interpreted by the courts so as to say we are making men and women equal, because men and women are not equal: they are different."(18)

The far-reaching implications of these equality arguments were soon recognized. Judge Schultz of the British Columbia County Court bench stated in a 1970 case⁽¹⁹⁾ that if the Bill of Rights were

.... interpreted to mean that there is 'discrimination by reason of ... sex' unless every crime contained in the Criminal Code applies to both males and females, then a number of sections of the Criminal Code are inoperative and, indeed, the criminal law of Canada is now in an emasculated, chaotic state." (emphasis supplied)

(18) Special Committee on Human Rights and Fundamental Freedoms, Minutes of Proceedings and Evidence, Numbers 1 to 12 (July 12-29, 1960), p.643.

(19) R. v. Lavoie, (1970), 16 D.L.R. (3d) 647, at p. 652.

This remark perhaps indicates the lighter side of jurisprudence on the "equality before the law clause". The decisions of the Supreme Court are more serious. They reveal the inability, or unwillingness, of the Court to approach section 1(b) as a strong guarantee of equality.

In the well-known case of Indian woman Jeanette Lavell, (20) a majority of the court rejected the claim that section 12(1)(b) of the Indian Act constitutes a denial of equality before the law. Section 12(1)(b) provides that an Indian woman who marries a non-Indian loses her Indian status. A similar "statutory excommunication" is not created for the male Indian who marries a non-Indian. The reasons of the majority stated that the equality before the law guarantee applied only to ensure equality in the administration of the law, and not equality in the law itself.

In Manitoba, women distributed an announcement of mourning for the Bill of Rights after the Lavell decision. It stated that "its short valuable life was dedicated to the freedom of MAN; its sudden, untimely death occurred when women expected to be included".(21)

(20) A. G. of Canada v. Lavell; Isaac et al v. Bedard, (1973) 38 D.L.R. (3d) 481 (S.C.C.).

(21) Status of Women News, Vol. 1, No. 2 (Winter 1974), cover and pages 2, 3.

In his dissenting reasons in the Lavell case,
Mr. Justice Laskin, as he then was, stated:

".... I doubt whether discrimination on account of sex, where as here it has no biological or physiological rationale, could be sustained as a reasonable classification even if the direction against it was not as explicit as it is in the Canadian Bill of Rights." (22)

This language would be a strong guarantee of equal treatment if it were adopted by the Court. Unfortunately, there is little indication that it will be.

The current position with regard to "equality before the law" is that set out in the case of Vancouver woman Stella Bliss. (23) Stella Bliss was in the classic Catch-22 position. She had not worked long enough to qualify for maternity benefits under the Unemployment Insurance Act. She didn't really want them either: she was fit and wanted to work.

(22) (1973) 38 D.L.R. (3d) 481, at 510.

(23) Bliss v. Attorney General of Canada, (1978) 23 N.R. 527 (S.C.C.).

But her employer dismissed her for maternity related reasons. Being jobless and willing and able to work, she applied for regular unemployment insurance. She was advised that she was not entitled to regular benefits because she could have the special pregnancy benefits. But she was advised that she couldn't have the pregnancy benefits because she hadn't worked long enough. And so on....

The Supreme Court held that she was not denied equality before the law with other unemployed workers. It stated that the distinction between Bliss and other workers was made on the basis of pregnancy, not sex, and was, moreover, for a "valid federal object". The object of the legislation was considered to be the provision of benefits to pregnant women. The Court regarded the object as valid largely because it accepted the argument of government lawyers that it was "beneficial". "Validity" was made to depend on benevolence. The problem was that Stella Bliss did not find the plan at all beneficial.

The "valid" or "beneficial" federal objects test seems to allow a Court to uphold any kind of sex-based distinction as long as the motives for it are good. When one considers that benevolent paternalism -- the "gilded cage" or "pedestal" phenomenon -- has been at the root of much of the restriction on women's roles, the dilemma becomes clear. The test for validity will uphold the very legislation which keeps women the most cloistered.

The need for a stronger constitutional stand against discrimination has been recognized. The 1968 federal government Working Paper on a Canadian Charter of Human Rights recognized the need to "entrench" guarantees of equality before the law, and to provide specific anti-discrimination measures in a new constitution. Other works, like the Molgat-MacGuigan Report, the Quebec Liberal Party's A New Canadian Federation, the Pepin-Robarts A Future Together, and Bill C-60, also speak of "entrenching" an equality before the law guarantee. The federal government has proposed a guarantee of equality before the law "without distinction or restriction other than any distinction or restriction provided by law that is fair and reasonable having regard to the object of the law".

There are those who would argue that this proposal does not go far enough. Merely "entrenching" the ineffective language of the present Bill of Rights will, they say, not advance the situation of women. They point to the language adopted by the framers of the Equal Rights Amendment in the United States. It provides:

"Equality of rights under the law shall not be denied by the United States or by any State on account of sex."

This is the strongest type of constitutional guarantee against sex-based discrimination. It is regarded by its proponents as a signal to Congress and the state legislatures that they must review existing laws to remove sex-based discrimination. Now, the governments do not have to take any such initiative, a position similar to that in Canada. Where the governments do not act in response to E.R.A.'s signal, its advocates feel that "The courts will be guided by a constitutional text clearly and cleanly on point." (24)

Some of the provinces believe, on the other hand, that basic rights are not best protected by an entrenched Bill of Rights. They argue that fundamental rights are well protected by our unwritten traditions of freedom, and by the legislation of governments responsive to local goals and conditions.

Clearly, the issue of whether a Bill of Rights should be "entrenched" and the problem of what it should say if it is "entrenched" are highly significant for women.

Federal Institutions

Quite commonly, proposals for constitutional change address the question of the composition of the Upper House.

(24) Ruth Bader Ginsberg, "Let's Have E.R.A. as a Signal," (Jan. 1977) 63 A.B.A. Journal 70, at p.73.

The desire to insure greater representation from the Provinces and Territories is a common theme. The National Action Committee on the Status of Women has identified the issue of women's appointments generally as one deserving attention in the constitutional context. This should really come as no surprise. The efforts by the National Council of Women and many others to secure the appointment of a woman Senator precipitated the celebrated "Persons Case." Women's groups across Canada have repeatedly raised their concerns about appointments at the federal and the provincial level.

There have been many proposals for re-structuring and renaming the Upper House. It has been suggested that we create a Council of the Federation (Pepin - Robarts), a House of the Federation (Bill C-60), and a Federal Council (Quebec Liberals). These proposals are all silent, however, on the question of women's presence in the Upper House.

The question therefore arises as to whether women wish to make an issue out of their representation in any proposed new Chamber. The reason why the issue can be suggested is quite simple. As long as the Upper House continues to be an appointed body, governments have control over who sits there. It may be the provincial and territorial governments rather than the federal government - or along with the federal government.

Nonetheless, appointment of persons means that governments, and not the electoral process, influence who will be chosen.

Do Canadian women want to have a constitutional guarantee of equal representation in a new Upper House? Some Canadian women may want to see the Upper House abolished altogether, in common with others of this view. Should we merely reform the Senate, however, instead of abolishing it, the question may have to be met.

The issue of guaranteed equality in appointments is one that will prove controversial. In the United States, where affirmative action programs for minorities have been in existence for a considerable time, there is a revaluation of the "justice" of programs which promote the advancement of one group in compensation for past wrongs. A constitutionally entrenched guarantee of equal representation in an appointed Upper House would be such a special measure, and would raise the same fundamental issues.

On the one hand, proponents of guaranteed representation might point to the slow progress in securing women's appointments since the "Persons case" established their eligibility. Women do compose at least half the population. There are women of all political and religious beliefs, living

in all parts of Canada, and deriving from all the national and cultural groups making up our country. And yet there are only ten women in the Senate. It cannot be that lack of "qualifications" is keeping women out. Governments need some direction to redress the balance.

On the other hand, "quota systems" and affirmative action measures are seen by many to be artificial and unneeded. It is said that they would prevent the recognition of real talent or merit by creating the impression that all women were appointed only because of the requirement to appoint women. Moreover, the justice of requiring advancement for one group and not for another, or of "holding one group back" in favour of another, has been questioned most strenuously.

The fact is that a time of constitutional change may be the best time to require all governments to reaffirm their commitment to equal opportunity for women. The vigour with which they do this may be the guide by which women will decide how hard they must work for better representation in the Upper House, and what sort of guarantees they will consider requiring.

One reason why the issue of composition of the Upper House becomes important is that a number of reform proposals

suggest a greater role for a reformed Upper House in the selection or approval of Supreme Court justices.

The concept of Senate approval of justices is familiar to Canadians who follow American politics. The very cautious performance of our Supreme Court in human rights areas may be, in part, attributable to the fact that the judges are drawn from a very narrow group: successful middle-aged, white male lawyers.

Having a more representative composition in the approving group may ensure over the years that potential judges with different backgrounds are sought out.

There may be other, more direct, ways of affecting the characteristics of the group from which our Supreme Court justices are chosen. Once again, the question of direct requirements arises. Regional representation, and rules relating to the legal background of appointees have already found wide acceptance. Perhaps another stipulation requiring a certain number of women justices should be added. Against this is the problem that the stipulation may prevent the best from being chosen, or make the "lady judge" feel like a token, or prejudice the chance for more women than required by the constitutional guarantee.

These issues, deceptively so simple, are difficult. Yet it is imperative that a Court with greater responsibilities under an entrenched Bill of Rights must be drawn from a wider group in society than is now the case.

Family Law

Under section 91 of the British North America Act, 1867, Head 26, the federal government has jurisdiction over "Marriage and Divorce". Head 12 of section 92 gives to the provinces "The Solemnization of Marriage in the Province", and the provinces also have jurisdiction over "Property and Civil Rights in The Province".

The federal jurisdiction under the British North America Act allows the federal Parliament to stipulate what would be necessary to establish a valid marriage. Not much use has been made of this power. The provincial governments are also able to make provisions related to the validity of marriage because of their power over solemnization of marriage. This present division of power means that both governments can impose requirements for validity. In the past, these requirements have related to matters like the degree of relationship between the parties (federal) and the requirement of parental consent where the parties are below a certain age (provincial).

The most current reform proposal in this area is the "best effort" draft of the February 1979 First Ministers Meeting, affirmed in July, 1980. It would transfer all jurisdiction over the requirements for valid marriages to the provincial governments. This suggestion probably does not seriously change the present position, given the small degree of federal government activity in the field.

The more controversial area of the current constitutional debate is the proposal to transfer a large part of the federal power over divorce to the provinces. Initially, the federal government proposed in October/November 1978 that all jurisdiction over divorce be transferred to the Provinces. A series of discussions, in February of 1979 and in July 1980, have both elaborated and cut back this proposal.

The plan as it now stands has a number of features. First of all, jurisdiction over divorce would be transferred to whichever provinces want it. Those which do not would continue to have in effect the federal Divorce Act.

Secondly, the federal government would continue to keep control over the jurisdictional bases upon which divorce can be granted, and over the recognition of divorce decrees. This means that the federal government would stipulate for all

the provinces certain minimum requirements which must be met before a person could get a divorce. It is also designed to allow the federal government to set uniform standards about when one province should recognize as legal a divorce obtained in another. These two provisions are aimed at reducing concern about "divorce havens" and at preventing a situation where a person might be regarded as divorced by one part of Canada but married by another.

This proposal does not ensure uniformity in the grounds for divorce across Canada. At the present time, grounds are uniform throughout the country, set out in the 1968 Divorce Act. This has not always been the case.

Prior to the 1968 Divorce Act, there was "a patchwork of laws derived from pre-Confederation, English and federal statutes.".(25) For persons domiciled in Quebec and Newfoundland, the only way of obtaining a divorce was by a private act of the Federal Parliament. In New Brunswick, Nova Scotia and P.E.I., divorce was available on the ground of adultery or of marriage within the prohibited degrees of kinship. Cruelty and impotence were additional grounds in Nova Scotia, whereas frigidity or impotence were additional grounds

(25) Derek Mendes da Costa, "Divorce", Studies in Canadian Family Law (Toronto: Butterworths, 1972), p. 362.

in New Brunswick and P.E.I. In Ontario until 1930, divorce was by Act of the Federal Parliament. Until 1925, a husband could obtain a divorce on the ground of his wife's adultery. The wife was obliged to prove one of incestuous adultery, bigamy with adultery, adultery with cruelty, adultery with desertion without reasonable excuse for two years and upwards, or rape, sodomy, or bestiality. After 1925, either spouse could petition on simple adultery. There are doubtless many who fear a return to this sort of patchwork, and the problems caused by having one spouse in a province with "liberal" grounds for divorce and one in a province where divorce is harder to obtain.⁽²⁶⁾

Before the passage of the 1968 Divorce Act, it was clear that the provinces had the constitutional power to pass laws dealing with the custody of children, and the support of spouses. The 1968 federal Divorce Act also dealt with these topics, empowering a court to make an order of maintenance or custody in a divorce action.⁽²⁷⁾ It was affirmed by the Courts that the federal government's power over "Divorce" in the British North America Act enabled it to include these matters in its Divorce Act.⁽²⁸⁾ They are called "corollary relief" in the Act itself, and sometimes also referred to as being

(26) Op. cit., pp. 362-364.

(27) Divorce Act, R.S.C. 1970, c. D-8, ss.

(28) Zacks v. Zacks, [1973] S.C.R. 891, (1973) 10 R.F.L. 53 (S.C.C.)

"ancillary" to divorce. The point of the terminology is that the federal government can legally deal with custody and maintenance only when these issues come up in the context of divorce. If there is no divorce power at the federal level, there would be no power to legislate on support and custody.

In February, 1979, the "best effort" proposal about family law which received support from governments was prepared to let all the federal jurisdiction over these "ancillary" matters go to the provinces. This, as much as any other detail of the proposals, caused a storm of reaction from women's groups.

The arguments in favour of shifting divorce and all its "ancillary" matters to the provinces are straightforward.

The Molgat-MacGuigan Report of 1972 recommended transfer of marriage and divorce to the provinces, because social policy ought to be within Provincial jurisdiction where possible; because it would allow for a more integrated approach to family law within provincial jurisdictions; and because it would allow for a more integrated approach within the civil and common law systems.⁽²⁹⁾

(29) Op. cit., p. 77.

The Pepin-Robarts Task Force on Canadian Unity report, A Future Together, recommended provincial jurisdiction over marriage and divorce because the essential role of the provinces is to take the main responsibility for the social and cultural well being and development of their communities.(30)

The Levesque government's summary of the position is that the "recovery of all powers over marriage, divorce and the courts will allow us to create true family courts, to update our family law and to recognize the equality of Quebec women in all areas."(31)

It has been pointed out by both the federal government and the Quebec Liberal Party that having federal jurisdiction over divorce at all is an exception to the general principle that control over the local and private matters is in provincial hands. As the reasons for the exception related to religious differences existing at Confederation, but no longer, it is argued that a "return" to local control is desirable.

The problem with "returning" the ancillary matters of custody and support to the provinces is the already woeful

(30) Task Force on Canadian Unity, A Future Together (Ottawa: Supply and Services Canada, 1979), p. 85.

(31) Gouvernement du Quebec, Conseil executif, Quebec-Canada: A New Deal (Quebec: Editeur officiel, 1979), p. 92.

state of enforcement of such orders. Even where all parties are within one province, it has been demonstrated time and again that support orders are difficult for a spouse in need to enforce against one with no desire to pay. The problems of settling custody orders, and then making them work, are all too familiar. Where one spouse moves away from the jurisdiction where the order was made, enforcement problems can go from bad to worse.

Observers point out that the problem is serious even with a federal presence in the divorce field. Although the Divorce Act allows a spouse to file an order in a Court anywhere in Canada and enforce it like an order of that Court, problems of distance remain, and variation of an order when circumstances of the parties have changed must still be done in the province where it was first made, even though neither of the former spouses still lives there. Without a federal presence in the area, matters would arguably be much worse.

Similarly, the federal Divorce Act now provides certain standards in the support and custody areas which are uniform across the country and some protection against a more conservative local approach. Both parents are equally entitled to apply for custody in a divorce; the standards applied to measure fitness for custody are the same for both. Both spouses

are entitled to apply for maintenance. Where local variations in laws applicable to the couple after they separate and before they divorce may still perpetuate differentiation between the sexes according to their stereotyped roles, the federal divorce standard offers a "last chance" to secure equal treatment.

The serious issues raised by women's groups did cause some revaluation in the position on family law in July of 1980. Particularly, the federal government stated that the aspect of the proposal dealing with the enforcement of maintenance and custody orders must be reconsidered. Formerly, the proposal was simply to let jurisdiction pass to the provinces. In July, the federal government said that if such a transfer would not improve the enforcement of such orders, there was a clear obligation to search for better ways to secure enforcement.

It was proposed that the governments explore a number of options to improve enforcement. These included (1) federal jurisdiction over enforcement of extra-provincial orders; and (2) a constitutional provision requiring that one province enforce the orders made in another province. At this stage in the discussions, it is certain that women will want to see serious commitment to exploring these devices further. Even women who favour a strong local voice in family law, or

exclusive provincial jurisdiction, may be concerned about inter-provincial problems.

The solution to the enforcement problem does not lie solely in the constitutional change. Moreover, it may take a while to bring about such change. The federal government proposed in July that to assist the constitutional discussion governments might explore the possibility of establishing a joint federal-provincial registry of family law orders to improve the enforcement process.

The latest proposals are responsive to some of the concerns raised by women's groups. The recognition that both constitutional and non-constitutional means are necessary to solve the enforcement problem is a breakthrough. It will be important to see if non-constitutional means are explored with real seriousness, or whether governments are simply speaking "off the top of their heads". Regardless of the outcome of the constitutional talks, some better co-ordinating legislation and enforcement machinery between provinces is crucial.⁽³²⁾

(32) In 1974, the Uniform Law Conference of Canada adopted a uniform act dealing with the extra-provincial enforcement of custody orders for the guidance of the provinces. If all provinces adopt it, a coherent nation-wide system might emerge. Ontario and Quebec are the only provinces which have not adopted the uniform legislation. Manitoba provides a locating service and a lawyer at no cost to someone with a custody order from another province whose children have been abducted and moved to Manitoba, to help in enforcing the extra-provincial order.

The proposals so far do not say anything about ensuring the maintenance of minimum standards of equality in divorce law once it is wholly in provincial hands. As the law stands now, nothing would prevent a province from making it easier for a man than for a woman to get a divorce. We are all familiar with the sex discrimination which was, historically, embedded in family law. We have probably all worked in our own provinces to change the law. Nothing now exists to stop a province, from enacting new, discriminatory legislation.

Once again, the issue of a strong Bill of Rights emerges. An entrenched Bill of Rights is one way of securing a minimum standard in all government action, including that of the provinces. A strong guarantee of equality before the law would be very important. Any guarantee allowing discrimination for "benevolent objects" might well perpetuate benevolent paternalism in family law.

To be sure, this is just one way of discussing the question of standards. The discussion is necessary even where jurisdiction over marriage and divorce remains in federal hands. The necessity deepens when the activities of twelve or thirteen jurisdictions start affecting us. Once again, women with a strong interest in local autonomy will nonetheless feel concern about the best way to ensure that their local governments affirm or strengthen their egalitarian treatment.

Another element of the current family law proposals is one which strengthens the Unified Family Court concept. The proposed amendment would permit a province to transfer to provincially-appointed judges any of the traditional powers in the family law area of federally-appointed judges. This would facilitate the creation and staffing of Unified Family Courts by the provinces. On their own initiative, they could appoint more judges, without having to seek federal appointments. They could also see that these judges performed wholly family law functions: most federally-appointed judges in Canada now hear a variety of different sorts of cases.

This provision is doubtless a welcome one. The careful observer might, however, wonder once again about representation of women's interests. Where, if at all, in our new Constitution, can we look to see if the provinces will be required to appoint women to these new Unified Family Courts? How will we ensure, by constitutional or other means, that there will be adequate funding to provide the necessary judicial and administrative services?

There may be many now who feel that the crisis in the family law area has passed. There may be many, eager to see full provincial autonomy in family law, who never saw this set of proposals in crisis terms. There may well be others who will not be satisfied with the current proposals. These proposals are certainly not responsive to all of the concerns raised by women's groups: they ignore completely the problem of standards

preventing discrimination on the basis of sex. A major achievement may well have been the recognition that non-constitutional, as well as constitutional, measures are needed to solve the enforcement dilemma. Whichever position one takes on the question of transfer, following up this initiative must be seen as an important priority.

The Spending Power

Canadian women are affected by a host of programs and services which might loosely be termed social welfare services. Some of them provide for the payment of an income to the person affected; some fund services to which she seeks access.

Even a cursory description of such measures shows how diverse they are. There are health and welfare services, like hospitalization and medicare. Income insurance measures include unemployment insurance, workmen's compensation, and retirement provisions like the Canada and Quebec Pension Plans. Income support measures include family allowances, old age security, guaranteed income supplement, veterans' pensions and allowances, allowances for blind and disabled persons, and so on. Some of these programs are under the Canada Assistance Plan, a federal statute authorizing contributions by the government of Canada toward the cost of programs for the provision of assistance and welfare services "to and in respect of persons in need."

There are other types of services used by women which are not, by any objective standard, "welfare" for needy people. Rape crisis centres, day care services, and interval houses for battered women and their children are the sorts of programs needed by women of all socio-economic backgrounds. The Canada Assistance Plan being one of the few available sources of funding, however, day care and interval houses come under its aegis. They are, as a result, styled and treated as services for a welfare type of clientele, or as "income support" measures. To complicate matters further, it is difficult to see where, if at all, rape crisis centres are placed for funding purposes. The harm in doing this is enormous: women needing services are deprived of them, either because they do not exist, or because they cannot accept anyone who does not fit the "welfare" label.

This array of women's services does have some connection with the ongoing constitutional debate. The issues are difficult and important. Any woman who has ever been given the run-around on funding by one or the other level of government has a good basic idea of what the issues are. Firstly, which level of government is responsible for initiating and developing services like this? Secondly, which level of government must pay for services? What level of control over the services should the power of the purse bring with it? Lastly, how do ordinary people get into this process and ensure

that the many governments pay attention to peoples' needs, not just government priorities?

The constitution has provisions relating to the raising of revenue by taxation. It has some, but not many, provisions about which level of government is responsible for a particular area, like unemployment insurance or health care. However, vast areas of the present practice in these fields are covered by no existing constitutional provision. Federal-provincial fiscal agreements, negotiated periodically, are the regulating mechanism. They are based on two premises: that the federal government's capacity to raise revenue is greater than that of the provinces, and that the provinces have responsibilities in health and social fields which outstrip their revenues. Getting federal money into provincial hands, with or without "strings attached" is the basic purpose of these fiscal arrangements. When this money moves, and what strings should be attached are key questions for individual women as well as for groups seeking funding. Proposals for control of this federal spending power have come up in the constitutional studies over the past few years. Should there be constitutional entrenchment of a method of control over the spending power, to replace or guide federal-provincial negotiation, the scheme adopted will affect us all for years.

Let us turn now to the first question mentioned above. Which level of government is responsible for services like those described?

With respect to some of them, the federal government has constitutional jurisdiction. A 1940 amendment to the British North America Act, 1867 gave the federal government exclusive jurisdiction in the field of unemployment insurance. Section 94A of the British North America Act, 1867 gives the federal government and the provincial governments a joint role with regard to some types of payments. It says that the federal government may

"... make laws in relation to old age pensions and supplementary benefits, including survivors' and disability benefits irrespective of age, but no such law shall affect the operation of any law present or future of a provincial legislature in relation to any such matters."

With regard to veterans' allowances, the federal government would have jurisdiction by reason of its power over Military and Naval Service and Defence.

The provincial governments have constitutional authority over most of the others under section 92(13), property

and civil rights in the Province, and section 92(16), matters of a local and private nature. A number of considerations bear on whether we consider this provincial preponderance desirable, or whether women wish to argue for greater centralism or more nation-wide standards.

The opportunity to meet local needs, and respond to local interests is clearly a factor in favour of retained or enhanced provincial control. Local desires to develop a cohesive and comprehensive social policy will be promoted by stronger local control over the existence and content of assistance programs. Particularly if provincial governments win in the consitutional review process a greater power to raise money by taxation, the provinces could conceivably plan and fund an array of services designed to meet local priorities.

On the other hand are the historical arguments in favour of centralism. Portability from province to province is desirable in some areas of income insurance. Ensuring a uniform level of essential services in all areas of Canada, perhaps pursuant to international commitments, is another significant factor.

Each individual who considers the question may well have personal preferences, based on the level of government she trusts, or feels most able to influence.

The question of the appropriate government to have jurisdiction over a particular subject matter is bound to be influenced by fiscal considerations. These, in turn, have their roots in the British North America Act distribution of powers. Section 92(2) of the B.N.A. Act restricts the provinces to the levying of direct taxes, but there is no comparable limitation on the power of the federal government. As a result, the federal government has a greater capacity to fund these services and programs, but does not have the constitutional power to determine their content. The government which does have the power to determine content may well not have the revenue.

The traditional responsibilities of the provinces are in the areas where costs have escalated in the post-war years. To the extent that a "fiscal gap" exists between revenues and necessary expenditures, there have been various devices developed to transfer revenue from the federal government to the provinces.

The federal-provincial arrangements in this area are not an appropriate subject for extensive discussion here. Those of primary interest are the federal-provincial grants, both conditional and unconditional. The unconditional grants are the carefully calculated "equalization payments" which are paid by the federal government to provinces with a below average tax

capacity. A number of constitutional reform proposals deal with the fate of the equalization grants, regarded as critical to well-being in less prosperous areas. In a significant respect, these transfers from the wealthier areas are an essential part of an overall national "equality" strategy for Canada.

It is conditional grants from the federal government to the provinces which fund a great number of the programs of significance to women. One writer identified the largest:

"By far the largest conditional grants have been for hospital insurance, medicare, assistance to post-secondary education, the Canada Assistance Plan, and regional development."(33)

Under the Canada Assistance Plan, the federal government pays 50% of all provincial expenditures for basic requirements of needy recipients. Capital costs, like those for the establishment of day care facilities, are excluded.

With regard to the conditional grant programs, a number of constitutional issues emerge. The federal government may desire to control the use to which "its" money is put, in

(33) Robin W. Boadway, Intergovernmental Transfers in Canada (Toronto: Canadian Tax Foundation, 1980), p.19.

order to ensure the achievement of social objectives it favours. On the other hand, the provinces may chafe at having to establish a particular program at all, because it disrupts local priorities. The provinces may, for example, wish to have "unconditional grants" or "block funding" from the federal government. By this sort of plan, the federal government just transfers a sum to the province, with no strings attached, and lets the province decide how to spend it. While desirable in the eyes of many local officials, these plans may let provinces build roads instead of day care centres. The safeguard of a federal check on the use of these funds may thus appeal to some women: although there is a real loss of local autonomy, the goals of an autonomous locality may not be sympathetic to women's interests.(34)

(34) A wide range of social services are financed by matching grants under CAP. These include crisis intervention services, information and referral services, family planning services, children's services, rehabilitation services, day care, home support, transportation for the disabled, counselling, employment-related services, social integration services. In 1978 Welfare Ministers from the federal government and the provinces agreed in principle to replace the current 50:50 cost-sharing arrangement, with a two-part scheme. The cost-sharing approach would continue to apply to basic income maintenance programs like welfare. Block funding, though, would apply to other existing programs and to any new ones. Part of the block funding is a "basic cash contribution" and part a "levelling payment." The basic cash contribution is a lump sum grant of equal per capita amounts to each province. As Boadway observes, "since the basic cash contribution is based on the national average federal transfer for social services, some provinces would gain and other lose." Boadway, op. cit., p.30. The foregoing description is taken from pp. 29 and 30 of Boadway. A bill to incorporate these changes was given first reading on May 12, 1978 (Bill C-55), but died on the order paper.

The individual user of programs or recipient of funding may not know of these tensions between governments. Her experience may have led her to see one level of government as particularly responsive to her needs, and desire to increase the control of that government over the services that might affect her. She no doubt wishes to have some influence over the sorts of programs that are started, and over whether they are continued.

Various proposals have been put forward to limit the control which the federal government can exercise by way of its conditional grants. The Pepin-Robarts Task Force suggests that the way to limit the federal government spending power would be to submit federal shared cost programs in areas of provincial competence to the consent of the provinces, or to a vote in a reformed Upper House.⁽³⁵⁾ The Molgat-MacGuigan Report endorses a federal proposal that a national consensus should be arrived at before a shared cost program is launched. It goes further however, proposing that the national consensus rule apply every ten years for each joint program, including existing programs, so as to prevent the undue perpetuation of certain joint programs.⁽³⁶⁾

(35) Task Force on Canadian Unity, Coming to Terms: The Words of the Debate (Ottawa: Supply and Services Canada, 1979), p. 51.

(36) Op. cit., pp. 50-53.

The individual woman - or group - may well doubt her/its ability to influence a game that is played on such a large scale. For example, the Royal Commission on the Status of Women in Canada recommended in its 1970 Report that the federal government "immediately" take steps to enter into an agreement with the provinces leading to a National Day Care Act under which federal funds would be made available to build and run centres. Nothing has been achieved to date, while the need for day care grows at an alarming rate. If a statutory reform relating to a federal-provincial joint program is this difficult to achieve, one can imagine the problems attending constitutional change.

Provisions for a "national consensus" may also seem daunting to women affected. The use by Ontario of what amounts to a veto to prevent the implementation of the proposed "drop-out" amendment of the Canada Pension Plan will come to the minds of many. National consensus in some cases means that women must convince all governments to care about women's issues. Convincing the federal government and one's province of residence is often quite hard enough.

Similarly, when these cost-sharing schemes provide that a province may "opt out" and receive an equivalent grant there are raised issues with which some women are already

familiar. Is it the individual who receives directly the benefit the government has foregone on her behalf, or is it the government? Women certainly need to evaluate whether there are any mechanisms to safeguard the individual and her right to be heard when these large power games are played by governments.

Reform of the spending power is not an immediate priority with governments. It is, however, within the second category of the five "Powers Over the Economy" proposed for study by the federal government. This second category, "Redistribution of Income" should be a focus of women's study in the immediate future. Women have real influence here if they act in time.

CONCLUSION

A Conference of the First Ministers on the Constitution convenes in Ottawa on September 8. We have seen that the process of seeking agreement among governments has been going on already, in the October 1978 and February 1979 Meetings, as well as in the Continuing Committee of Ministers on the Constitution. On some of the matters of interest to women, which are already on the bargaining table, it is likely that we do not have a lot of leisure to make up our minds, before our choice is made for us. Women must stand fast in continuing to

put forward their point of view about changing the distribution of powers over family law. We must decide whether we want the First Ministers to agree that a Bill of Rights should be entrenched. Once they have reached that agreement, if we approve it, then women must hold them to it, by insisting on drafting these basic guarantees of freedom and equality in a way that will mean something. Women must also be vigilant that the Bill of Rights does not become a bone to be fought over. Imagine a country where politicians might be willing to trade away our basic rights to secure greater control over resources!

So, part of the task facing women awakened to our real stake in the constitutional debate is immediate, and pressing. Part, however, is more long term. We know that discussions over taxation, particularly resource taxation, are unlikely to be easily resolved. The problems of arriving at any consensus on the large economic issues of a "common market" or economic union in Canada are formidable: the B.N.A. Act deals only with customs duties between the provinces, and all of the crucial economic issues raised by sovereignty-association proposals, labour mobility, government investment and spending, remain to be thoroughly discussed. We are not yet in the economic mainstream of Canada. We are still out of positions of economic power and still seeking the basic individualized justice of day care so

that we can work outside the home, and equal pay for work of equal value when we do. The government-shaking larger issues do, however, affect us daily. It is clearly in our interests to become more familiar with them, and to make our own values known. In the crucial area of services for women, our voice is essential to see that an equitable way of assessing spending priorities is developed -- particularly if it is to be enshrined in a constitution.

As far as government institutions are concerned, our voice has long been heard, advocating fairer representation of women in decision-making bodies. The ambitious plans put forward by governments and others for reform have not yet addressed this aim. A famous revolution was once fought because of taxation without representation! If governments do not see our place and our voice in their assemblies, it is up to women to bring the point home.

Women are on the brink of serious involvement in constitutional reform. We have within our grasp the ability to change radically the nature of debate. Women are the largest "minority", the most all-pervasive special interest group in Canada. The introduction of women into the constitutional review process would represent a substantial shift toward individual concerns and away from the special power games of governments. Moreover, the agenda for discussion, and the

nature of proposals, could well be changed. The idea of a guarantee of representation for women in government institutions is only one of the woman-oriented approaches to constitutional reform to come out of our serious application to these topics. There may be a need to consider others. There is a need to develop a "consumer's" proposal for a mechanism to set priorities for government spending. We should review the implications for women and their communities of the proposals for a "more perfect" economic union, which carry with them the prospect of greater mobility of workers.

It is up to us to make sure that we are included in the constitutional review process, and that the perspectives and goals of women are taken seriously. We have a special, historical relationship to the constitution, as we had to fight so hard for so long to be included in even its minimal provisions. Let us not stop now.

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